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F. Disqualification Hearings

1. Overview

- a. The hearing officer(s) will be:
- or
- i. The Human Services Agency Fair Hearing Officer(s),
 - ii. Any other impartial official designated by the Department of Social Welfare who:
 - A. Does not have any personal stake or involvement in the case.
 - B. Was not directly involved in the initial determination of the action which is being contested.
 - C. Was not the immediate supervisor of the eligibility worker who took the action.
- b. Administrative Disqualification Hearings will be consolidated with fair hearings if:
- i. The factual issues arise out of the same, or related circumstances, and
 - ii. The household receives prior notice that the hearings will be combined.

2. Referral

- a. Districts will refer cases to the Fraud Unit where there is question of intentional program violation. Referral is through the use of a DSW 108FS.
- b. Fraud Unit personnel will make a full investigation as to the facts and then, in accord with the guidelines, will either:
 - i. Refer back to the District to be processed as an inadvertent household error, or
 - ii. Refer to the appropriate State's attorney with a recommendation to pursue for fraud, or
 - iii. Refer for a disqualification hearing.

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2. Referral (Continued)

- c. Generally, the decision to refer for State's Attorney action or Administrative Disqualification Hearing will be decided by the following:
 - i. State's Attorney action will be for any case which is supported by sufficient evidence to prove:
 - A. recipient knowledge, as well as
 - B. enrichment equal to \$1,000 or more (either Food Stamp losses alone, or combined with other programs).
 - ii. Administrative Disqualification Hearings will be for a case where:
 - A. the Department believes the facts do not warrant prosecution through the appropriate court system,
 - B. there is clear and consistent evidence to support that a recipient intentionally:
 - 1. made a false statement or misrepresentation of the facts or
 - 2. concealed or withheld the facts used in determining eligibility and benefits and
 - C. the loss is less than \$1,000 (either Food Stamp losses alone, or combined with other programs).

NOTE: The \$1,000 cut-off in i. and ii. above is only a guideline and exceptions will be made as particular case situations warrant.

- iii. Administrative Disqualification Hearings may also be conducted in cases:
 - A. previously referred for prosecution that were declined by the State's Attorney.
 - B. previously referred cases where no action was taken within a reasonable period of time and

the referral was formally withdrawn by the Department.

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3. Advance Notice of Hearing

The hearing officer shall provide written notice (Form DSW 108FSHN) to the household member suspected of intentional program violation and:

- a. the notice shall be provided at least 30 days in advance of the date the disqualification hearing has been scheduled, and
- b. the notice shall be mailed by certified mail, return receipt requested, or
- c. provided by any other method as long as proof of receipt is obtained.

4. Scheduling of Hearing

- a. The time and place of the hearing shall be arranged so as to be convenient to the household member suspected of intentional program violation.
- b. The hearing officer will arrange and schedule the hearing.

5. Participation While Awaiting a Hearing

- a. A pending disqualification hearing shall not affect the individual's or the household's right to be certified and participate in the program.
 - i. If the misstatement or other action of which the household member is suspected does not affect the household's current circumstances the household will:
 - A. Continue to receive its allotment based on the latest certification action, or
 - B. Be recertified based on a new application and current circumstances, or
 - C. Be terminated if the certification period has expired and, the household fails to reapply after receiving its notice of expiration.
 - ii. If there is documentation which substantiates that the household is ineligible or eligible for fewer benefits (even if these facts led to the suspicion of intentional program violation and the resulting

hearing):

- A. Reduce or terminate the benefits unless the household requests a fair hearing and continuation of benefits pending the hearing.

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6. Waived Hearings

a. The household member suspected of intentional program violation may waive the right to an administrative disqualification hearing by signing a waiver form (DSW 108FSHW). The waiver form will be:

- i. Delivered to the suspected member by a Fraud Unit investigator, and
- ii. Thoroughly discussed, along with the member's rights, during the course of the interview with the investigator.

b. Signed waivers may be accepted:

- i. By the Fraud Unit investigator at the time of the interview, or
- ii. By the Department at any time during the hearing

process.

7. The Hearing

a. Postponement

- i. The household member or representative is entitled to a postponement provided the request is made to the hearing officer at least 10 days in advance of the date of the scheduled hearing.
- ii. The hearing shall not be postponed for more than a total of 30 days.
- iii. The number of postponements is limited to one.
- iv. The hearing officer will notify the Fraud Unit of any postponements.

b. Time Frame

- i. Within 90 days of the date the household member is notified in writing that a hearing has been scheduled, the hearing officer shall:
 - A. Conduct the hearing.
 - B. Arrive at a decision.
 - C. Notify the household member and the Fraud Unit of the decision.
- ii. If the hearing is postponed, the 90 days shall be extended for as many days as the hearing is

postponed.

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7. The Hearing (Continued)

c. Rules of Procedure

- i. The hearing officer shall:
 - A. Administer oaths or affirmations.
 - B. Insure that all relevant issues are considered.
 - C. Request, receive, and make part of the record all evidence determined necessary to decide the issues being raised.
 - D. Regulate the conduct and course of the hearing consistent with due process to insure an orderly hearing.
 - E. Order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to the household and the State agency.
 - F. Provide a hearing record and render a hearing decision in the name of the State agency (Department of Social Welfare) which will resolve the dispute.
 - G. Advise the household member or representative that he or she may refuse to answer questions during the hearing.
- ii. The hearing authority shall be:
 - A. The person designated to render the final administrative decision in a hearing, and
 - B. Will also be the hearing officer.
- iii. Attendance at the hearing shall be subject to the following conditions:
 - A. A representative of DSW, the household member and/or a representative who may be an attorney are required to attend.
 - B. Friends or relatives of the household member

are permitted to attend if the member so chooses.

- C. The hearing officer is responsible for deciding who may attend if space limitations exist where the hearing is being held.

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7. The Hearing (Continued)

c. Rules of Procedure (Continued)

- iv. If the household member or representative cannot be located or fails to appear at a hearing without good cause:

- A. The hearing shall be conducted without the household member being present, and
- B. The hearing officer is required to carefully consider the evidence and determine if intentional program violation was committed based on clear and convincing evidence, and
- C. If the household member is found to have committed an intentional program violation, the household member has 10 days from the scheduled date of the hearing to present reasons indicating good cause for failure to appear. If the hearing officer then determines that the member or representative had good cause for not appearing:

valid. 1. The previous decision shall no longer remain

2. The hearing authority shall schedule and conduct a new hearing.

3. The hearing officer who originally ruled on the case may conduct the new hearing.

4. The hearing officer must enter the good cause decision into the record.

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7. The Hearing (Continued)

d. Household Rights

- i. The household member or representative must be given adequate opportunity to:
 - A. Examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing.
 - B. Have the contents of the case file made available provided that confidential information is protected from release. Examples of confidential information are:
 1. The names of individuals who have disclosed information about the household without its knowledge, and
 2. The nature or status of pending criminal prosecutions.
 - C. Be provided a free copy of portions of the case file that are relevant to the hearing.
 - D. Present the case or have it presented by a legal counsel or other person.
 - E. Bring witnesses.
 - F. Advance arguments without undue interference.
 - G. Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.
 - H. Submit evidence to establish all pertinent facts and circumstances in the case.
- ii. Documents or records that the household will not have an opportunity to contest or challenge shall not be introduced at the hearing or affect the hearing official's decision.
- iii. These rights will be fully discussed by the fraud

investigator with the household member suspected
of intentional program violation.

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8. Hearing Decision

- a. The hearing decision from the hearing authority shall:
 - i. Specify the reasons for the decision.
 - ii. Identify the supporting evidence.
 - iii. Identify the pertinent FNS regulation.
 - iv. Respond to reasoned arguments made by the household member or representative.
- b. The decision from the hearing authority shall be sent to the DSW Fraud Unit and the client.
- c. The DSW Fraud Unit shall notify the appropriate District Office of the decision via the DSW 108FS. The District Office shall send written notification of the decision to the household member and will inform the household member as follows:
 - i. If the hearing officer found that the household member did not commit intentional program violation, the written notice shall inform the household member of the decision.
 - ii. If the hearing officer found that the household member committed intentional program violation, the written notice (DSW 108FSDN) shall:
 - A. Inform the member of the decision and the reason for the decision.
 - B. Inform the member of the date the disqualification will take effect.
 - C. If the individual is no longer participating, inform the individual that the period of disqualification will be deferred until such time as the individual again applies for and is determined eligible for program benefits.
 - D. Inform the remaining household members, if any, of either the allotment they will receive during the period of disqualification or that they must reapply because the

certification period has expired.